

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

**MILES LIVINGSTON, ANNA
LIVINGSTON and CHRISTOPHER
GLAVACH,**

Plaintiffs,

v.

**LOUIS BERGER formerly LOUIS
BERGER GROUP, VIRGIN ISLANDS
WATER & POWER AUTHORITY, and
BLUESOURCE, LLC,**

Defendants.

LOUIS BERGER GROUP, INC.,

Third-Party Plaintiff,

v.

BLUESOURCE, LLC,

Third-Party Defendant.

LOUIS BERGER GROUP, INC.,

Third-Party Plaintiff,

v.

ACP, LLC,

Third-Party Defendant.

**TO: Lee J. Rohn, Esq.
Eugenio W.A. Geigel-Simounet, Esq.
Scot F. McChain, Esq.**

Miles Livingston et al. v. Louis Berger et al.

1:19-cv-00012

Order Denying Motion for Sanctions for Failure to Comply with Court Order

Page 2

**Yohana M. Manning, Esq.
Carl A. Beckstedt, III, Esq.
Daryl C. Barnes, Esq.
James L. Hymes, III, Esq.
Warren B. Cole, Esq.**

ORDER DENYING MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH COURT ORDER

THIS MATTER is before the Court upon Plaintiffs Miles Livingston's, Anna Livingston's, and Christopher Glavach's Motion for Sanctions for failure to Comply with Court Order (ECF No. 228) and Louis Berger's Response to Plaintiffs' Motion for Sanctions (ECF No. 232). Plaintiffs did not file a Reply.

Plaintiffs request that the Court sanction Louis Berger for failing to Comply with the Court's Order granting Plaintiffs motion to compel supplemental discovery responses (ECF No. 228 at 1); (*see also* ECF No. 143 at 6).¹ Following this motion, Louis Berger filed a Notice of Service of Louis Berger's Second Supplemental Responses to Plaintiff Mile Livingston's Second Demand for Production of Documents (ECF No. 231).

Then Louis Berger responded that it submitted "track down" emails related to the ordering and acquisition of arc flash PPE; however, it did not produce changes to Army

¹ As part of the sanction, Plaintiffs request that the Court order Louis Berger to pay their counsel "\$400.00, representing one (1) hour of an attorney's time for having to bring this motion" (ECF No. 228 at 3). In addition, Plaintiffs request that the Court "caution Defendant that further failure to adhere to this Court's orders will result in further sanctions, including deeming Plaintiff's allegations as admitted and striking Defendant Louis Berger['s]...affirmative defenses." *Id.* at 3.

Miles Livingston et al. v. Louis Berger et al.
1:19-cv-00012
Order Denying Motion for Sanctions for Failure to Comply with Court Order
Page 3

Corps. Of Engineers Work Order Issuance Procedures because “[n]o information was found” (ECF No. 232 at 1-2).

As to its failure to produce “track down” emails before Plaintiffs filed this motion, Louis Berger responds that it inadvertently failed to do so because of a “precipitated...medical condition requiring [its attorney] to undergo heart surgery on two occasions in 2021, the first one taking place during the last week of January, 2021, with follow up procedures in April, 2021.” *Id.* at 2. In addition, counsel for Louis Berger apologizes to this Court for its inability to “fully concentrate on case matters as a consequence of his physical condition, and respectfully submits that there was no willful intention to withhold his information and that a failure to do so was solely the result of human error to which all of us fall prey from time to time.”² *Id.* at 2.

Local Rule 7.1(f) states, “[u]nless there are exigent circumstances, all non-dispositive motions shall contain a representation that the movant sought concurrence in the motion from each party, and that it has either been granted or denied.” LRCi 7.1(f).

First, the Court finds no exigent circumstances that would extinguish Plaintiffs’ requirement to seek concurrence before bringing this motion. Second, there is no indication that Plaintiffs sought concurrence from each party before bringing this motion.

² Louis Berger also lays out the substantive grounds for denying the motion, but the Court sees no reason to entertain these arguments because, as will be discussed, Plaintiffs failed to comply with LRCi 7.1(f) in bringing this motion.

Miles Livingston et al. v. Louis Berger et al.

1:19-cv-00012

Order Denying Motion for Sanctions for Failure to Comply with Court Order

Page 4

Thus, the Court will deny Plaintiffs' request for sanctions for their failure to comply with LRCi 7.1(f).

WHEREFORE, it is now hereby **ORDERED**:

1. Plaintiffs Miles Livingston's, Anna Livingston's, and Christopher Glavach's Motion for Sanctions for Failure to Comply with Court Order (ECF No. 228) is **DENIED**.

ENTER:

Dated: July 23, 2021

/s/ George W. Cannon, Jr.

GEORGE W. CANNON, JR.

U.S. MAGISTRATE JUDGE